

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CLAUDE OWENS.

Plaintiff.

V.

J. REED,

Defendant.

Case No. 22-cv-08662-SVK

ORDER OF SERVICE

INTRODUCTION

Plaintiff, a California prisoner, filed this pro se civil rights complaint under 42 U.S.C. § 1983 against an official at the California Training Facility (“CTF”), where Plaintiff is housed.¹ Plaintiff’s application to proceed *in forma pauperis* is granted in a separate order. For the reasons explained below, the complaint is ordered served upon Defendant.

STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” *Id.* § 1915A(b). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” “Specific facts are not necessary; the

¹ Plaintiff consented to the jurisdiction of a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). (ECF No. 2.)

statement need only give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although to state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer “enough facts to state a claim for relief that is plausible on its face.” *Id.* at 1974.

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

LEGAL CLAIMS

Plaintiff alleges that Defendant Reed, a CTF Lieutenant, retaliated against Plaintiff for filing a grievance against her by finding Plaintiff guilty of violating prison rules. He claims that this violated Plaintiff's First Amendment rights. He further alleges that Reed did not allow Plaintiff to call any witnesses at the disciplinary hearing, which he claims violated Plaintiff's right to due process. When liberally construed, Plaintiff's allegations state viable claims for the violation of his First Amendment and due process rights.

CONCLUSION

1. Defendant Lieutenant J. Reed shall be served at the California Training Facility.

Service shall proceed under the California Department of Corrections and Rehabilitation's (CDCR) e-service program for civil rights cases from prisoners in CDCR custody. In accordance with the program, the Clerk is directed to serve on CDCR via email the following documents: the Complaint, a Magistrate Judge jurisdiction consent form, this Order, a CDCR Report of E-Service Waiver form, and a summons. The Clerk also shall serve a copy of this Order on the Plaintiff.

No later than 40 days after service of this order via email on CDCR, CDCR shall provide the Court a completed CDCR Report of E-Service Waiver advising the Court which Defendant(s)

1 listed in this order will be waiving service of process without the need for service by the United
2 States Marshal Service (USMS) and which Defendant(s) decline to waive service or could not be
3 reached. CDCR also shall provide a copy of the CDCR Report of E-Service Waiver to the
4 California Attorney General's Office which, within 21 days, shall file with the Court a waiver of
5 service of process for the Defendant(s) who are waiving service.

6 Upon receipt of the CDCR Report of E-Service Waiver, the Clerk shall prepare for each
7 Defendant who has not waived service according to the CDCR Report of E-Service Waiver a
8 USM-205 Form. The Clerk shall provide to the USMS the completed USM-205 forms and copies
9 of this Order, the summons, and the operative complaint for service upon each Defendant who has
10 not waived service. The Clerk also shall provide to the USMS a copy of the CDCR Report of E-
11 Service Waiver.

12 2. Defendant shall complete and file the Magistrate Judge jurisdiction consent form
13 within the deadline provided on the form. She shall also file an answer in accordance with the
14 Federal Rules of Civil Procedure.

15 3. To expedite the resolution of this case:

16 a. No later than **91** days from the date this order is issued, Defendant shall file a
17 motion for summary judgment or other dispositive motion. The motion shall be supported by
18 adequate factual documentation and shall conform in all respects to Federal Rule of Civil
19 Procedure 56 and shall include as exhibits all records and incident reports stemming from the
20 events at issue. If Defendant is of the opinion that this case cannot be resolved by summary
21 judgment, she shall so inform the Court prior to the date the summary judgment motion is due.
22 All papers filed with the Court shall be promptly served on Plaintiff.

23 b. At the time the dispositive motion is served, Defendant shall also serve, on a
24 separate paper, the appropriate notice required by *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th
25 Cir. 1998) (en banc). *See Woods v. Carey*, 684 F.3d 934, 940-941 (9th Cir. 2012).

26 c. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the
27 Court and served upon Defendant no later than **28 days** from the date the motion is filed. Plaintiff
28 must read the attached page headed "NOTICE -- WARNING," which is provided to him pursuant

1 to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc).

2 d. Defendant shall file a reply brief no later than **14** days after the opposition is
3 filed.

4 e. The motion shall be deemed submitted as of the date the reply brief is due. No
5 hearing will be held on the motion unless the Court so orders at a later date.

6 4. All communications by Plaintiff with the Court must be served on Defendant or her
7 counsel once counsel has been designated, by mailing a true copy of the document to Defendant or
8 her counsel.

9 5. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.
10 No further Court order under Federal Rule of Civil Procedure 30(a)(2) is required before the
11 parties may conduct discovery.

12 Plaintiff is reminded that state prisoners inmates may review all non-confidential material
13 in their medical and central files, pursuant to *In re Olson*, 37 Cal. App. 3d 783 (Cal. Ct. App.
14 1974), 15 California Code of Regulations § 3370, and the CDCR's Department Operations
15 Manual §§ 13030.4, 13030.16, 13030.16.1-13030.16.3, 13030.21, and 71010.11.1. Requests to
16 review these files or for copies of materials in them must be made directly to prison officials, not
17 to the Court.

18 6. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court
19 informed of any change of address by filing a separate paper with the clerk headed "Notice of
20 Change of Address." He also must comply with the Court's orders in a timely fashion. Failure to
21 do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of
22 Civil Procedure 41(b). Reasonable requests for an extension of a deadline will be allowed upon a
23 showing of good cause if the request is filed prior to the deadline.

24 **SO ORDERED.**

25 Dated: January 17, 2023

26 
27 SUSAN VAN KEULEN
28 United States Magistrate Judge

NOTICE -- WARNING (SUMMARY JUDGMENT)

If Defendant moves for summary judgment, he is seeking to have your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact--that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in Defendant's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial.